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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	DOCKET NO. 39649
)	
v.)	
)	
ROBERT ALAN FLORES, JR.,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
<hr/>		

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNEVILLE

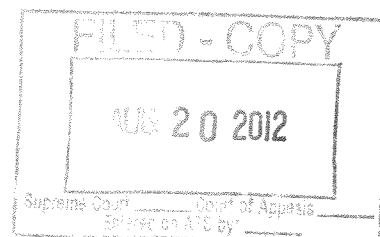
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STATEMENT OF THE CASE

Nature of the Case

Robert Alan Flores, Jr., appeals from the district court's judgment of conviction and asserts that the district court erred in denying his motion to suppress evidence. Mr. Flores asserts that his right to be free from unreasonable searches and seizures, protected by the Fourth and Fourteenth Amendments to the United States Constitution and Article I § 17 of the Idaho Constitution, was violated when a law enforcement officer entered his mother's closet and conducted a search without a warrant and without any valid exceptions to the warrant requirement. Specifically, he asserts that the State failed to meet its burden of proving that Mr. Flores' mother consented to the search of the closet.

Statement of the Facts and Course of Proceedings

Around 2:00 a.m., Modesto Castro called the Idaho Falls police and complained about people attempting to break into her apartment. (05/17/11 Tr., p.6, Ls.3-13, p.7, Ls.9-17.) Ms. Castro also informed the police that her son, Mr. Flores, was staying at her apartment, and that he had gone out on the balcony to see what was going on. (05/17/11 Tr., p.7, Ls.14-21, p.17, Ls.1-6.) After arriving on the scene, Officer Steel did not see any people outside of Ms. Castro's apartment. (05/17/11 Tr., p.6, Ls.14-17.)

At that time, Sergeant Galbreath, who arrived a few minutes before Officer Steel, spoke with Ms. Castro, who told him that Mr. Flores was in the back of the apartment near the bedrooms. (05/17/11 Tr., p.7, Ls.22-25; p.16, Ls.8-19.) After speaking with Ms. Castro at the apartment, Sergeant Galbreath asked her to get Mr. Flores. (05/17/11 Tr., p.18, L.17-19.) Sergeant Galbreath and Ms. Castro looked for Mr. Flores twice but could not find him. (05/17/11 Tr., p.7, L.22 – p.8, L.10.)

Upon a second "search" of the apartment, Officer Steel observed Mr. Flores near a closet in a bedroom. (05/17/11 Tr., p.9, Ls.1-11, p.11, Ls.11-18.) Without a warrant, any indication Mr. Flores was on probation, and without speaking with Mr. Flores, Sergeant Galbreath, demanded that Mr. Flores take his hands out of his pockets, withdrew his firearm, and pushed Mr. Flores. (05/17/11 Tr., p.19, Ls.2-9, p.23, Ls.5-10, p.35, L.17 – p.36, L.23.) Officer Steel then handcuffed Mr. Flores, and searched him, withdrawing money and gum from one of Mr. Flores' pockets. He then took him out of the bedroom into the front room. (05/17/11 Tr., p.19, L.22 – p.20, L.10; 10/18/11 Tr., p.84, L.24 – p.85, L.14.)

According to Officer Steel, he then asked Ms. Castro for permission to search the apartment, and Ms. Castro consented to that request. (10/18/11 Tr., p.82, L.12 – p.83, L.7.) According to Ms. Castro though, Officer Steel never asked her if he could search her apartment. (10/18/11 Tr., p.110, Ls.15-20.) Regardless, Officer Steel searched the closet in the bedroom where Mr. Flores was found and discovered methamphetamine. (05/17/11 Tr., p.9, L.19 – p.11, L.2.)

Mr. Flores was charged by Information with trafficking in methamphetamine. (R., pp.19-20.) Mr. Flores then filed a motion to suppress all evidence gathered against him in violation of the Constitution and laws of the United States and the State of Idaho. (R., pp.47-48.) A suppression hearing was held and, thereafter, the district court issued a memorandum and order denying Mr. Flores' motion to suppress. (R., pp.74-81.) Pursuant to a plea agreement, the State filed an amended information charging Mr. Flores with a lesser charge of possession with intent to deliver, to which Mr. Flores pleaded guilty. (R., pp.86-87, 91-93, 102.) The terms of the plea agreement specifically preserved Mr. Flores' ability to challenge the denial of the motion to suppress on

appeal. (R., p.91.) Thereafter, the district court imposed a unified sentence of twelve years, with two years fixed. (R., pp.102-104.) Mr. Flores timely appealed. (R., pp.106-108.)

ISSUE

Did the district court err when it denied Mr. Flores' motion to suppress?

ARGUMENT

The District Court Erred When It Denied Mr. Flores' Motion To Suppress

A. Introduction

In the present case, the State conceded that Mr. Flores had standing to challenge the constitutional basis for the search. (10/18/11 Tr., p.1, L.21 – p.2, L.17; R., p.) Since the search was conducted without a warrant, the State bore the burden of proving that the search fell within a well-recognized exception to the warrant requirement. The consent exception was utilized by the State to justify the search of Ms. Castro's closet, where the contraband was found. At the suppression hearing, Officer Steel testified that Ms. Castro gave him consent to search the closet. (10/18/11 Tr., p.82, L.12 – p.83, L.7.) However, Ms. Castro testified that Officer Steel did not ask for consent to search and that she never gave him consent to search either the closet or the apartment. (10/18/11 Tr., p.110, L.15 – p.111, L.9.) The district court made a factual finding that Ms. Castro consented to the search of the closet. (R., p.78.) The only issue which needs to be determined on appeal is whether there is substantial and competent evidence to support the district court's factual finding that Ms. Castro provided Officer Steel consent to search the closet. Mindful of the applicable standard of review, Mr. Flores argues that the district court's factual finding is not supported by substantial and competent evidence.¹

¹ The suppression motion also dealt with the issue of whether the pat down and removal of money and gum from Mr. Flores' pocket was illegal. (R., pp.56-60.) The State conceded that these actions were illegal. (R., p.79.) However, the district court concluded that the discovery of the contents of Mr. Flores' pockets was inevitable because his person would have been lawfully searched under the search incident to arrest exception to the Fourth Amendment's warrant requirement. (R., pp.79-80.) Mr. Flores is not challenging this legal finding on appeal.

B. Standard of Review

In *State v. Cutler*, 143 Idaho 297 (Ct. App. 2006), the Court of Appeals articulated the following standard of review for an appeal from a motion to suppress:

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court.

Id. at 302. (citations omitted).

C. The District Court Erred When It Denied Mr. Flores' Motion To Suppress

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Idaho Const. Art. I § 17. *The "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed"* *State v. Johnson*, 110 Idaho 516, 523 (1986) (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)) (emphasis original). An overnight guest in the house of another can carry "an expectation of privacy that is protected by the Fourth Amendment." *Lint v. State*, 145 Idaho 472, 479 (Ct. App. 2008).

Warrantless searches are presumptively unreasonable. *State v. Martinez*, 129 Idaho 426, 431 (Ct. App. 1996). However, warrants are not required if a search falls under "a few specifically established and well-delineated exceptions." *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)); *see also State v. Brauch*, 133 Idaho 215, 218 (1999). The State "bears the burden to demonstrate that a warrantless search either fell within a well-recognized exception to the warrant requirement or was otherwise reasonable under the

circumstances.” *Martinez*, 129 Idaho at 431 (citation omitted). If the government fails to meet this burden, the evidence acquired as a result of the illegal search, including later-discovered evidence derived from the original illegal search, is inadmissible in court. *Brauch*, 133 Idaho at 219; *Segura v. United States*, 468 U.S. 796, 804 (1984).

“Voluntary consent to search from a person who has actual authority to so consent obviates the need for a warrant.” *State v. Fee*, 135 Idaho 857, 862 (Ct. App. 2001) (citing *United States v. Matlock*, 415 U.S. 164, 170 (1974)); *Johnson*, 110 Idaho at 522; *State v. Ham*, 113 Idaho 405, 406 (Ct. App. 1987). “Permission to search may come from someone other than the defendant who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.” *Lint*, 145 Idaho at 480. Additionally, a search warrant is not required when police officers reasonably believe that the person consenting to the search has authority to consent. *Brauch*, 133 Idaho at 219, 984 P.2d at 707. The state bears the burden of proving that consent has been given and that the person giving consent had authority to do so. *Johnson*, 110 Idaho at 521; *Matlock*, 415 U.S. at 171.

In this case, the State conceded that Mr. Flores had a privacy interest in the closet based on his status as an overnight guest. (10/18/11 Tr., p.1, L.21 – p.2, L.17; R., p.) There were no legal disputes concerning the State’s use of the consent exception to the warrant requirement. Therefore, the only issue on appeal is whether the district court’s determination that Ms. Castro consented to the search of the closet is supported by substantial and competent evidence.

Mindful of the standard of review, which provides that the power to assess a witness’ credibility resides in the district court, and requires factual findings that are supported by substantial and competent evidence are not to be second guessed on

appeal, Mr. Flores contends that the district court's conclusion that his mother consented to the search of the closet was clearly erroneous. At the suppression hearing, Ms. Castro testified that she was never asked by an officer if he could search the closet. (10/18/11 Tr., p.110, Ls.15-20.) She also testified that she was never asked by an officer if he could search her apartment. (10/18/11 Tr. p.110, L.21 – p.111, L.9, p.115, L.16-24.) Ms. Castro went on to testify that she never gave Officer Steel permission to enter her apartment. (10/18/11 Tr., p.115, L.25 – p.116, L.6.) While Officer Steel did testify that Ms. Castro provided him consent to search the closet, Mr. Flores asserts that Officer Steel's credibility was undermined due to his numerous inconsistent statements. (10/18/11 Tr., p.82, L.12 – p.83, L.7; p.92, L.14 – p.96, L.25, p.98, L.20 – p.103, L.22.)

In light of Ms. Castro's testimony as well as Officer Steel's inconsistent testimony, Mr. Flores asserts that the district court's factual finding that Ms. Castro consented to the search of the apartment is clearly erroneous and, therefore, the district court erred when it denied Mr. Flores' motion to suppress.

CONCLUSION

Mr. Flores respectfully requests that this Court vacate the district court's order of Judgment and Commitment and reverse the order which denied his motion to suppress and remand this case to the district court for further proceedings.

DATED this 20th day of August, 2012.

A handwritten signature in black ink, appearing to read 'Shawn F. Wilkerson', written over a horizontal line.

SHAWN F. WILKERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING


I HEREBY CERTIFY that on this 20th day of August, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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